



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/293,009	04/16/1999	ERIC VALLONE	061607-1020	4296

24504 7590 08/09/2004

THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP
100 GALLERIA PARKWAY, NW
STE 1750
ATLANTA, GA 30339-5948

EXAMINER

DUONG, DUC T

ART UNIT	PAPER NUMBER
----------	--------------

2663

14

DATE MAILED: 08/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/293,009

Applicant(s)

VALLONE ET AL.

Examiner

Duc T. Duong

Art Unit

2663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5,13 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-13 and 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 5-13, and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulman (U.S. Patent 5,600,632) in view of Ennis, Jr. et al (U.S. Patent 5,867,483).

Regarding to claims 1, 5, 8, and 11, Schulman discloses a system (Fig. 3) for displaying network performance parameters comprising means for collecting (col. 7 lines 39-42), from a plurality of communication devices (network analyzers) configured to support user devices (DETs), network latency (col. 7 line 48), data delivery success (col. 7 lines 52-53), and frame size distribution network parameters (col. 7 lines 49) associated with a virtual circuit between the plurality of communication devices (col. 2. lines 3-13); and a display means (col. 4 lines 20-21) for displaying said network parameters.

Schulman fails to teach for collecting and displaying network parameters bit burst analysis, wherein said bit burst analysis information comprises a plurality of bit burst counters, each of said bit burst counters counting a number of bits that was placed into one of a plurality of burst categories.

However, Ennis discloses a system (Fig. 1) for collecting and displaying network bit burst analysis (Fig. 12 col. 15 lines 36-41), wherein, said bit burst analysis information (col. 9 lines 9-15) comprises a plurality of bit burst counters (col. 9 lines 28-30), each of said bit burst counters counting a number of bits (col. 11 lines 47-57) that was placed into one of a plurality of burst categories (col. 10 lines 34-59, the five percentage range of burst utilization read on the burst categories).

Thus, it would have been obvious to one of ordinary skilled in the art, at the time of the invention, to employ the burst counters as taught by Ennis in Schulman's system to measures the bandwidth utilization for each individual circuit and increments, after each sampling interval, wherein each counter represents a different bandwidth utilization percentage range. The motivation to do so would have been to reduce the storage requirements for sampling information and accommodate limited memory resources of the probe (col. 3 lines 16-23).

Schulman and Ennis together fail to teach for displaying bit burst analysis, network latency, data delivery success, and frame size distribution parameters. However, to arrange the a display means to displays bit burst analysis, network latency, data delivery success, and frame size distribution parameters would have been obvious to a person of ordinary skill in the art for a network manager view the network parameters effecting users communication. The motivation to do so would have been to allow the network manager to analyze the performance and responsiveness of the network to establish an efficient and cost effective system and service levels for users.

Art Unit: 2663

Regarding to claims 2 and 6, Schulman discloses the display means further comprises a graphical user interface with plurality views of the network performance parameter (col. 4 lines 20-21).

Regarding to claims 3, 7, 9, and 12, Schulman discloses the network performance parameters are collected from said at least two communication devices by said network management system (Fig. 3 col. 7 lines 39-42).

Regarding to claims 10 and 13, Schulman discloses of allowing an administrator of a network the ability to determine, from said plurality of network performance parameter views, the performance of said communication network (col. 7 lines 60-64).

Regarding to claim 16, Schulman discloses the network parameters are applies to data traffic traveling a virtual circuit between a first communications device in said plurality of communications devices and a second communications device in said plurality of communication devices, wherein the virtual circuit is a permanent virtual circuit (Fig. 3 col. 2 lines 3-7).

Regarding to claim 17, Schulman fails to teach for the virtual circuit is of a switched virtual circuit. However, Ennis discloses a system for probing network parameters over a switched virtual circuit (Fig. 1 col. 3 lines 52-58). Thus, it would have been obvious to one of skilled in the art to employ a SVC as taught by Ennis to established communication an as needed-basis. The motivation to do so would have been to provide automatic and dynamic network load balancing.

Regarding to claims 18-20, Schulman fails to teach the display means displaying all the network parameters simultaneously. However, to arrange a display means to

Art Unit: 2663

displays all the network parameters simultaneously would have been obvious to one of skilled in the art since such arrangement would allow a more efficient view of the network characteristics. The motivation to do so would have been to enable an administrator of the network to correlate the network performance better.

Response to Arguments

3. Applicant's arguments filed May 21, 2004 have been fully considered but they are not persuasive. Regarding to Applicant's argument with respect to claims 1, 5, 8, and 11, Schulman and Ennis fail to suggest a "display means for displaying bit burst analysis information, network latency information, data delivery success information, and frame size distribution information associated with a virtual circuit between the first and second communication devices" is traverse. As stated in the above rejection, Schulman and Ennis discloses all the limitation with respect to the claims including means for collecting bit burst analysis, network latency, data delivery success, and frame size distribution parameters and means for display various network parameters. Though Schulman and Ennis fail to teach for displaying those specifically parameters, it would have been obvious to one skill in the art to implement for the purpose of constructing an efficient and optimal network.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2663

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Duong whose telephone number is 703-605-5146. The examiner can normally be reached on M-Th (9:00 AM-6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on 703-308-5340. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DD
DD

ANDY LEE
PATENT EXAMINER

